

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2015

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case (Appeal) Nos.906 to 908 of 2013

Commissioner of Income Tax,
Chennai

.. Appellant in
all the

appeals.

Versus

M/s.Balaha Chemicals Agencies,
Cissons Complex, Room No.12, 4th Floor,
150, Montieth Road,
Egmore, Chennai-600 008.

.. Respondent in
all the

ppeals

Prayer in T.C.A.No.906 of 2013: Appeal filed against the order of the Income Tax Appellate Tribunal "A" Bench, dated 14.2.2013, in ITA No.308/Mds/2012, under Section 260 A of the Income Tax Act, 1961 arising against the consolidated order of the CIT(A)-XII, Chennai, dated 25.11.2011 in assessment year 1997-98 against the order dated 27.03.2007 passed by the Deputy Commissioner of Income Tax, Business Circle-IX, Chennai for the Assessment Year 1997-98, against the Assessment Order dated 28/03/2005.

Prayer in T.C.A.No.907 of 2013: Appeal filed against the order of the Income Tax Appellate Tribunal "A" Bench, dated 14.2.2013, in ITA No.309/Mds/2012, under Section 260 A of the Income Tax Act, 1961 arising against the consolidated order of the CIT(A)-XII, Chennai, dated 25.11.2011 in assessment year 1998-99 against the order dated 27.03.2007 passed by the Deputy Commissioner of Income Tax, Business Circle-IX, Chennai for the Assessment Year 1998-99, against the Assessment Order dated 24/03/2005.

Prayer in T.C.A.No.908 of 2013: Appeal filed against the order of the Income Tax Appellate Tribunal "A" Bench, dated 14.2.2013,

in ITA No.310/Mds/2012, under Section 260 A of the Income Tax Act, 1961 arising against the consolidated order of the CIT(A)-XII, Chennai, dated 25.11.2011 in assessment year 2001-02 against the order dated 27.03.2007 passed by the Deputy Commissioner of Income Tax, Business Circle-IX, Chennai for the Assessment Year 2001-02, against the Assessment Order dated 31/03/2004.

For Appellant : Mr.J.Narayanasamy
in all WPs

For Respondent : Mr.A.S.Sriraman for
in all WPs Mr.S.Sridhar

COMMON JUDGMENT

(Judgment of the Court was made by M.JAICHANDREN,J.)

The above Tax Case Appeals have been filed against the common order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.Nos.308, 309 and 310 of 2012, relating to the assessment years, 1997-1998, 1998-1999 and 2001 and 2002.

2. The brief facts of the case are as follows:

2.1) The respondent in the present appeals, (hereinafter referred to as "the assessee") had been engaged in the dealership and distribution of various industrial chemicals, which are being used in the textile industry. The assessment of the assessee, for the assessment years 1997-1998, 1998-1999 and 2001-2002, had been completed, disallowing the claim for deduction of commission, as expenditure paid to D.D.Vyas, Proprietor of M/s.Shree Narottam Agencies, Srinivas Vyas, Proprietor of M/s.Pushpak Sales Corporation and Manohar Vyas, Proprietor of M/s.Srinivasa Enterprises.

2.2) The Assessing Officer had concluded in the assessment that no services had been rendered, by the agent, for the payment of the commission. Such a finding was based on the survey conducted in the case of D.D.Vyas. The additions made in the assessment years had been upheld by the Income Tax Appellate Tribunal, in I.T.A.Nos.1236, to 1239/Mds/2006, dated 15.6.2007. On being satisfied that the assessee firm had concealed the particulars of its income and had furnished inaccurate particulars of such income, by claiming false expenditure, the Assessing Officer had levied penalty, under Section 271(1) (c) of the Income Tax Act, 1961.

2.3) Aggrieved by the said order, the assessee had preferred appeals before the Commissioner of Income Tax (Appeals). The

Commissioner of Income Tax (Appeals) had held that the commission payments made to D.D.Vyas and his sons cannot be treated as false or inaccurate particulars and accordingly, the appeals had been allowed.

2.4) Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue had filed appeals before the Income Tax Appellate Tribunal. The Tribunal had held that it is not the case of the Revenue that the payments claimed by the assessee, as deductible, were found to be bogus in nature. It had also been held that no material was brought on record before the Tribunal, by the Revenue, to show that the decision of the Supreme Court, in C.I.T. Vs. Reliance Petroproducts Private Limited (322 ITR 158 SC) and the decisions of the Madras High Court, in C.I.T. Vs. S.Sankaran [241 ITR 822 (MAD)] and C.I.T. Vs. Cafco Syndicate Shipping Company [294 ITR 134 (Mad)], would not be applicable to the facts and circumstances arising in the appeals. Thus, the Tribunal had dismissed the appeals filed by the appellant.

2.5) Aggrieved by the order passed by the Tribunal, the Revenue has preferred the present appeals before this Court, under Section 260A of the Income Tax Act, 1961, raising the following substantial question of law.

"1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in dismissing the appeal preferred by the revenue against the order of the Commissioner of Income Tax (Appeals) directing the assessing officer to delete the penalty levied by the assessing officer under Section 271(1)(c) of the Income Tax Act, 1961?"

3. The learned counsel appearing on behalf of the appellant had submitted that the Income Tax Appellate Tribunal had erred in dismissing the appeals preferred by the appellant, against the order of the Commissioner of Income Tax (Appeals), directing the Assessing Officer to delete the penalty levied under Section 271 (1)(c) of the Income Tax Act, 1961. He had further submitted that the Income Tax Appellate Tribunal ought to have appreciated the fact that the assessee had concealed the particulars of its income or had furnished inaccurate particulars of such income.

4. The learned counsel had further submitted that the Tribunal had failed to note that even though the payments of commission had been routed through banking channels, the genuineness of the transactions is vital to prove that the payments had been made wholly and exclusively for the purpose of the business. He had further submitted that the Tribunal had failed to note that the assessee firm had concealed the particulars of income, by claiming bogus payments of commission.

5. It had been further submitted that the Tribunal had erred in holding that it is not the case of the Revenue that the payments claimed by the assessee were found to be bogus and that the assessee had not concealed particulars of income or furnished inaccurate particulars of income, as laid down in Section 271(1)(c) of the Income Tax Act, 1961.

6. It had also been submitted that the Tribunal had failed to note that the judgment of the Delhi High Court, in C.I.T. Vs. Zoom Communication P Ltd. (327 ITR 510), would apply to the facts of the present case. The learned counsel had further submitted that the quantum appeals filed by the assessee had become final. He had further submitted that it had been found that the sub agents of D.D.Vyas and his Sons were incapable of being commission agents, as they had no knowledge of the business.

7. It had also been stated that the cheques deposited in the name of the commission agents had been withdrawn, immediately, thereafter. It had also been stated that, in spite of sufficient particulars having been given, the assessee had not furnished sufficient materials to show the bona fide nature of the transactions carried on by the commission agents. No books of accounts had been maintained to prove that the transactions were bona fide in nature. As such, the Tribunal had erred in dismissing the appeals filed by the Revenue.

8. The learned counsel appearing for the appellant had relied on the decision of the Supreme Court, in MAK DATA (P) LTD., Vs. COMMISSIONER OF INCOME-TAX - II (2013) 38 TAXMANN.COM 448 (SC), wherein, it had been held that the question is whether the assessee has offered any explanation for the concealment of the particulars of income, or for furnishing inaccurate particulars of income. The explanation to Section 271(1) of the Act raises the presumption of concealment when a difference is noticed by the assessing officer, between reported and assessed income.

9. The learned counsel appearing for the respondent/assessee had submitted that Section 271(1)(c) of the Income Tax Act would not apply to the facts and circumstances of the case, to levy a penalty on the assessee, alleging that it had concealed the particulars of its income or had furnished inaccurate particulars of such income. The learned counsel had further submitted that there is no error in the findings of the Income Tax Appellate Tribunal, dated 14.2.2013, while rejecting the appeals filed by the Revenue.

10. The learned counsel appearing for the respondents had

relied on the following decisions in support of his contentions:

10.1. In Civil Appeal No.2463 of 2010, dated 17.3.2010, COMMISSIONER OF INCOME TAX Vs. RELIANCE PETROPRODUCTS (P) LTD, the Supreme Court had held that merely because the assessee claimed deduction of interest expenditure which has not been accepted by the Revenue, penalty under Section 271(1)(c) is not attracted. Mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

10.2 In Tax Case Nos.1 and 2 of 1980, dated 29.6.1995, COMMISSIONER OF INCOME TAX Vs. CHANDRAKANT M.TOLIA, the Division Bench of this Court had held that the assessee, having produced the discharged hundis displaying the names and addresses of the creditors and the relevant books in respect of the hundi loans, the initial burden cast on the assessee, under the explanation to Section 271(1)(c), stood discharged and, thereafter, the Department having taken no steps to discharge the burden that shifted on it, the Tribunal was justified in deleting the penalty.

10.3 In Tax Case (Appeal) No.246 of 2007, dated 5.3.2014, COMMISSIONER OF INCOME TAX Vs. CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD., the Division Bench of this Court had held that, in order to invoke the penalty proceedings, under Section 271(1)(c), the Revenue should prove that the claim made was not sustainable in law and the assessee had made a concealment of the particulars of income.

10.4 In Tax Case (Appeal) No.504 of 2009, dated 12.11.2013, COMMISSIONER OF INCOME TAX Vs. GEM GRANITES, the Division Bench of this Court had held that, the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and the assessed income. The burden is on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation has been discharged by the assessee, the onus shifts on the revenue to show that the amount in question constituted their income and not otherwise.

11. In view of the submissions made by the learned counsels appearing on behalf of the appellant, as well as the respondent in the present appeals and on a perusal of the records available and in view of the decisions cited supra, we do not find any cause or reason to interfere with the order passed by the Income Tax Appellate Tribunal, dated 14.2.2013.

12. It could be noted, from the order of the Commissioner of Income Tax (Appeals), dated 25.11.2011, that the assessee had been dealing in distribution of various industrial chemicals

during the relevant financial years. The manpower employed by the assessee was too small to handle the distribution work, when compared to the total volume of the business and the areas to be covered. Hence, the assessee firm had been engaging several commission agents to identify the customers, booking orders, recovering the dues etc. All the commission payments made to the Commission agents, by the assessee, except the payments made to D.D.Vyas and his sons had been found to be genuine and therefore, allowed by the assessing officer.

13. It had also been found by the Commissioner of Income Tax (Appeals) that, in the survey conducted, under Section 133A of the Act, the receipts of commission from the assessee, by D.D.Vyas and his sons, had not been examined. The disallowance of commission payments to the concerns of D.D.Vyas and his sons had been made only on the presumption that the amounts paid to the sub agents were not genuine in nature. The receipts of commission in the hands of D.D.Vyas and sons had not been questioned. In fact, the receipts of commission by D.D.Vyas and his sons, from the assessee, had been assessed to tax. From the ledger extract, it could be noted that the commission payments to D.D.Vyas and sons were at regular intervals, during the relevant financial years. The commission payments had been made by way of cheques and there was no evidence on record, furnished by the department, to show that the commission paid to D.D.Vyas and his sons had been received back, by the assessee or by anyone operating on its behalf.

14. From the facts available, it could be seen that the department had not shown anything to prove that the assessee had not incurred expenses, by way of payments of commission to D.D.Vyas and his sons. The disallowance was only on the ground that the sub-commissions claimed to have been paid by D.D.Vyas and his sons, to their sub-agents, were not genuine in nature. Based on the decision of the Supreme Court, in CIT Vs. Reliance Petroproducts Private Limited 322 ITR 158 (SC), it had been held that mere claim of deduction will not automatically attract a penalty, under Section 271(1) (c) of the Act.

15. It had also been held that mere failure of an assessee to explain satisfactorily the amounts shown as expenditure would not lead to imposition of the penalty, unless there are some materials to prove that the claim was false, as held by Income Tax Appellate Tribunal in the case of SUPER METAL INDUSTRIES Vs. DCIT 317 ITR (AT) 161 (Mumbai).

16. The allegation made by the department that the sub-agents were tea stall owners and soap sellers, who had been introduced by D.D.Vyas and his sons, for the purpose of opening

of bank accounts, cannot be put against the assessee. The assessee cannot be held to be liable for the sub agents, if any, nominated by the Commission agents, who had received the payments of commission. The department had failed to discharge the onus of proving that the assessee had made false claims, wilfully, or had furnished inaccurate particulars, while claiming deductions on the payment of commission.

17. We find that the Tribunal had given proper reasons for dismissing the appeals, confirming the order passed by the Commissioner of Income Tax (Appeals). The Tribunal, had rightly dismissed the appeals filed by the Revenue holding that no specific error could be pointed out in the order passed by the Commissioner of Income Tax (Appeals) - XII, Chennai, dated 25.11.2011, relating to the assessment years 1997-1998, 1998-1999, 2001-2002. The Tribunal had also found that the Revenue had relied upon the findings of the Tribunal in the quantum appeal filed by the assessee. However, it had been found, on a perusal of the order of the Tribunal passed in the quantum appeal, that the disallowance of commission payments was made by the Tribunal, by observing that the assessee shall show that the service was actually rendered and the expenditure is exclusively and wholly incurred for the purpose of the business. The Tribunal had also observed that the payment of commission in question had been made, by way of cheques and the recipient of the commission had been assessed to tax.

18. It had also been observed that it is not the case of the Revenue that the money which the assessee had paid to the agent, by way of cheques, had come back to the assessee. It had also held that the genuineness of the payment is evidenced by the banking transactions. Only the deductibility of the payments was found to be not tenable for want of evidence to establish that the payments had been made wholly and exclusively, for the purpose of the business of the assessee. The Tribunal had also held that it is not the case of the Revenue that the payments claimed by the assessee, as deductible, were found to be bogus in nature.

19. Relying on the decision of the Supreme Court, in C.I.T. Vs. Reliance Petroproducts Private Limited (322 ITR 158 SC) and the decisions of the Madras High Court in C.I.T. Vs. S.Sankaran [241 ITR 822 (MAD)] and C.I.T. Vs. Cafco Syndicate Shipping Company [294 ITR 134 (Mad)], the Tribunal had dismissed the appeals filed by the Revenue. The Tribunal had also held, while dismissing the appeals filed by the Revenue, that no materials were brought on record before the Tribunal, by the Revenue, to show that the decisions relied on by the Tribunal, to arrive at its conclusions, were not applicable to the facts and

circumstances of the present case. As such, the Tribunal had not found sufficient cause or reason to interfere with the order passed by the Commissioner of Income Tax (Appeals) and had rejected the claim made by the Revenue, while dismissing the appeals.

20. We are also of the view that the Revenue has not been in a position to show that the payments of commission made by the assessee, which is said to have been assessed to tax, were bogus in nature. Further, there is nothing on record to show that the assessee had concealed the particulars of its income or had furnished inaccurate particulars of such income. In such circumstances, we do not find any merit in the appeals filed by the Revenue. As such, the question of law raised in the present appeals is answered in favour of the respondent assessee and against the Revenue. Accordingly, the present Tax Case Appeals stand dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. Commissioner of Income Tax,
Chennai.

+1cc to M/S.T.R.Senthil Kumar, Advocate, S.R.No.67971
+1cc to M/S.S.Sridhar, Advocate, S.R.No.68146

Tax Case (Appeal) Nos.906 to 908
of 2013

rsk(CO)
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